



**QUEEN'S
UNIVERSITY
BELFAST**

'Children and Religious Discrimination', Briefing for the Child Rights Information Network (CRIN), published on its website in September 2009, as part of a database on non-discrimination.

Langlaude, S. (Author). (2009). 'Children and Religious Discrimination', Briefing for the Child Rights Information Network (CRIN), published on its website in September 2009, as part of a database on non-discrimination.. Web publication/site, Unknown Publisher.

Queen's University Belfast - Research Portal:

[Link to publication record in Queen's University Belfast Research Portal](#)

General rights

Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact openaccess@qub.ac.uk.

Children and religious discrimination

Briefing for CRIN

In 2001, the then-UN Special Rapporteur on Freedom of Religion or Belief, Mr Abdelfattah Amor, noted:

‘The policy of assimilating the children of minorities, thereby making them lose their identity, is a most harmful form of discrimination because it sows the seeds for the continuation of discriminatory attitudes beyond the generations practising them at any given time’.¹

Religious freedom is far from being guaranteed for all and discrimination on the basis of religion of religion or belief is still a problem for many. In the case of children, religious discrimination is very often linked to the situation of their parents. Religious minorities are the groups that almost always suffer from discrimination and the situation is usually exacerbated in countries that have a state or majority religion. The current UN Special Rapporteur on Freedom of Religion or Belief, Ms Asma Jahangir, said:

‘The Special Rapporteur concludes that discrimination based on religion or belief often emanates from deliberate State policies to ostracize certain religious or belief communities and to restrict or deny their access, for example, to health services, public education or public posts. States have the duty to refrain from discriminating against individuals or groups of individuals based on their religion and belief (obligation to respect); they are required to prevent such discrimination, including from non-State actors (obligation to protect); and States must take steps to ensure that, in practice, every person on their territory enjoys all human rights without discrimination of any kind (obligation to fulfil)’.²

Article 14 of the 1989 UN Convention on the Rights of the Child provides:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public

¹ A. Amor, *Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference*, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Doc. A/CONF.189/PC.2/22, paragraph 85 (2001).

² A. Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, UN Doc. A/HRC/10/8, page 2 (2009).

safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 14 does not specifically focus on religious discrimination and there is an emphasis on religious liberty. It should however be interpreted in the light of Article 2 of the Convention. It is important to note the ‘novelty’ of Article 14(2). In addition to the right of parents against the state to provide direction to their child in the light of the child’s evolving capacities, the Article notes that children evolve and mature and that their right to religious freedom should be interpreted in this light.

What follows is a summary of the key issues involving children and religion, from a non-discrimination perspective (and also from a religious liberty perspective when necessary).

Religious upbringing and family law issues

One of the key issues is when parents are prohibited by the state to bring up their children in accordance with their own (the parents’) religious or philosophical beliefs,³ notably when they do not belong to the majority faith. For example, members of the Baha’i community were arrested in Iran for attempting to teach the faith to children.⁴

Discriminatory practices have included a number of custody battles where one parent alleged to have been discriminated against by the state’s domestic courts. In a number of cases before the European Court of Human Rights, the mother belonged to a new religious movement and lost the custody dispute, generally on the basis that it was not in the children’s best interests to be brought up in the mother’s religion and religious practices.⁵ The Court found a violation of the European Convention in some of these cases. The applications were brought by the mother but the children are inextricably tied in. Parents have a right to bring up their children in accordance with their own religious convictions and children have a right to be brought up in their parents’ faith and beliefs. This means that the state should not be quick to dismiss a religious upbringing and it should not act in a discriminatory fashion against less well-known beliefs. Finally it must satisfy a heavy burden before deciding that specific religious practice are not in the best interests or are harmful to children and interfering with the child’s religious upbringing.

In 2008, a Jordanian convert from Islam to Christianity was charged with apostasy and told that he would lose custody of his children if he did not deny his conversion.⁶

³ See Article 18(4) of the International Covenant on Civil and Political Rights, Article 5 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, and Article 2 of Protocol 1 of the European Convention of Human Rights.

⁴ A. Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Addendum: Summary of Cases Transmitted to Governments and Replies Received*, UN Doc. A/HRC/10/8/Add.1, paragraph 86 (2009).

⁵ See European Court of Human Rights, *Hoffmann v Austria*, Application 12875/87 (judgment 23 June 1993), *Palau-Martinez v France*, Application 64927/01 (judgment 16 December 2003), *F.L. v France*, Application 61162/00 (decision 3 November 2005) and *Deschomets v France*, Application 31956/02 (decision 16 May 2006).

⁶ A. Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*,

The state cannot prevent or prohibit parents from bringing up their child in accordance with their own religion and convictions. The state is not allowed to prohibit parents from giving religious education at home or in the religious community. Similarly, it cannot impose tests on the evolving capacities of the child, or age-limits according to which religious education would not be possible before a certain age.

Issues in education and religious education

Discrimination in education may take a variety of forms, such as vexations suffered at school by the children of believers on the part of teachers of other pupils. Children can also be denied access to school or be expelled from school because of their or their parents' religion.

One of the most serious instances of religious discrimination is forcing children to undergo religious education in a religion other than their own (or the parents'). If the teaching is not objective then exemptions must be provided on a non-discriminatory basis.

For example, in the Maldives, expatriate school pupils who chose not to study Islam were unable to pass their end of year school exams; Islam formed an integral part of the school curriculum and it had been alleged that alternative subjects were not offered to expatriate school pupils.⁷ In Georgia, state schools were carrying out mandatory instruction in the Georgian Orthodox faith without the possibility of exemption.⁸

The Child Committee reported that in Myanmar, Christian or Muslim children who were too poor to go to state primary schools, were sent to Buddhist monasteries, had no alternative educational opportunity and were taught the teachings of Buddhism.⁹

The state must refrain from imposing on parents and children a policy of neutrality in the education of children at school, which would interfere with the relationship between child, parents and religious community. In addition, the state must not interfere with the education of the child at school. If the state provides religious education classes, whether denominational or not, they might interfere with the nurture of the child at home or in the religious community. Accordingly, the child has a right to complete exemption. If the child is young, it is up to the parents to decide and withdraw their child from these classes, and when the child comes of age then the decision is up to them. The issue is to know when the child comes of age, and who decides so. The state may have a margin of appreciation to decide upon an age-limit or a range of ages according to which the child comes of age, yet this must allow flexibility.

Legal status or identity

Addendum: Summary of Cases Transmitted to Governments and Replies Received, UN Doc. A/HRC/10/8/Add.1, paragraph 113 (2009).

⁷ A. Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief, Addendum: Mission to the Maldives*, UN Doc. A/HRC/4/21/Add.3, paragraph 48 (2007).

⁸ A. Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief, Addendum: Summary of Cases Transmitted to Governments and Replies Received*, UN Doc. A/HRC/4/21/Add.1, paragraph 146 (2007)

⁹ UN Committee on the Rights of the Child, *Concluding Observations: Myanmar*, UN Doc. CRC/C/15/Add.69, paragraph 16 (1997).

Other problems may arise when religion is recorded on identity documents. For example, the state may not allow a change of religion if the parents or the child convert to another religion; a child who belongs to a different religion than his or her parents may not be able to register a different religion; it may not be possible to register a religion other than the ones approved by the state.

In 2004, the UN Child Committee was concerned that religion and ethnic origin were indicated on identity documents.¹⁰

In countries where religion is recorded by law, the child has a right not to disclose it, and a procedural right to change their religion on the records. In addition, when the record of the child's religion depends on the parents' religion, the child has a right to change the records. The state may have a margin of appreciation in deciding when the child comes of age but its discretion is not complete.

Religious practices

Children from a minority religion can also face difficulties if they object, for religious reasons, to participation in 'neutral' activities. For example, the Child Committee reported that a child had reportedly been expelled from school in Japan for refusing to participate in kendo exercises.¹¹

There may also be an issue of discrimination regarding taking days off school for religious festivals or holy days if school practices disproportionately affect children members of religious minorities. Schools often choose to accommodate requests for occasional religious festivals but it becomes more difficult when the child or the parents make an exemption request for a regular event. For example, the calendar of Western countries is historically based on Christianity and may affect minority children whose religion considers Friday or Saturday a day of rest. The European Court of Human Rights has dismissed such applications,¹² but there should be some accommodation based on a balancing of interests.

Case study on religious symbols and religious clothing: the case of France

Children may also be compelled to comply with a neutral dress code and this has arisen most noticeably in the case of religious symbols and clothing. In 2004, France passed a law prohibiting children in state schools from wearing clothing and insignia that 'conspicuously manifest a religious affiliation'.¹³ A directive issued by the Minister of Education says that 'the prohibited signs and dress are those by which the wearer is immediately recognizable with regard to his or her religion, such as the Islamic veil, whatever its name, the kippah or a crucifix of manifestly

¹⁰ UN Committee on the Rights of the Child, *Concluding Observations: Myanmar*, UN Doc. CRC/C/15/Add.237, paragraphs 34-35 (2004).

¹¹ UN Committee on the Rights of the Child, *Summary Record of the 465th meeting: Japan*, UN Doc. CRC/C/SR.465, paragraph 6 (1998).

¹² European Court of Human Rights, *Martins Casimiro and Cerveira Ferreira v Luxembourg*, Application 44888/98 (decision 27 April 1999)

¹³ Law n° 2004-228 (15 March 2004), Official Journal n° 65, 17 March 2004, page 5190.

exaggerated dimensions'.¹⁴ Apparently the law applies to all religions and to all religious symbols falling under the directive; however Muslim school girls wearing the Islamic headscarf are disproportionately affected and the law thus has a discriminatory effect. One can also argue that the law discriminates based on gender because it disproportionately affects girls rather than boys.

- In its report on France in 2004, the Child Committee noted the alleged rise in discrimination. It also noted that the law may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education.¹⁵

- The current UN Special Rapporteur on Freedom of Religion or Belief, Ms Asma Jahangir, pointed out that Muslim girls were disproportionately affected by the law, that the Sikh community was also concerned by the law and that there were feelings of oppression.¹⁶

- The European Court of Human Rights, however, dismissed applications brought by Muslim girls who were expelled from school.¹⁷

Freedom of worship

Freedom of worship must not be restricted to official or registered religions. Parents and children must not be discriminated against if they belong to a religion that is not official or registered.

For example, the Child Committee said that allowing non-Muslims, in the Maldives, to practise their religion in the homes suggested that they were prevented from doing so in public, which was discriminatory.¹⁸

Coercion and forced conversions, including the denial of benefits

States must not ostracize certain religious or belief communities and to restrict or deny their access to, for example, health services, public education or public posts. Children (and their parents) must not be compelled to convert in order to be able to have access to these benefits.¹⁹

The state is not allowed to forcibly convert the child through forced marriages, abduction and kidnappings. The child has a right that the state does not force them to undergo initiation rituals, attend services of worship or religious ceremonies. In addition, the state must not force the child to accomplish 'neutral' acts that the child considers to be in contradiction with their religious beliefs, and there is a burden on the state to justify any interference.

¹⁴ Translation by Eva Brems in 'Above Children's Heads: The Headscarf Controversy in European Schools from the Perspective of Children's Rights' (2006) 14(2) *International Journal of Children's Rights* 119-136, page 120.

¹⁵ UN Committee on the Rights of the Child, *Concluding Observations: France*, UN Doc. CRC/C/15/Add.240, paragraphs 25-26 (2004).

¹⁶ A. Jahangir, *Civil and Political Rights, including the Question of Religious Intolerance: Mission to France*, UN Doc. E/CN.4/2006/5/Add.4, paragraphs 47-72 (2006).

¹⁷ European Court of Human Rights, *Kervanci v France* and *Dogru v France*, Applications 31645/04-27058/05 (judgments 4 December 2008).

¹⁸ UN Committee on the Rights of the Child, *Summary Record of the 466th meeting: Maldives*, UN Doc. CRC/C/SR.466, paragraphs 75 & 81 (1998).

¹⁹ See also Committee on Economic, Social and Cultural Rights, *General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/20, paragraph 22 (2009).

Conclusion

Overall, instances of religious discrimination against children (and their family) are numerous and varied. What emerges is the child's belonging in a religious community and the importance not to 'disturb' the child's relationship with parents and religious community. It is also important to consider some issue in the light of the child's right to religious freedom.

Dr Sylvie Langlaude
School of Law
Queen's University Belfast
Northern Ireland
June 2009